



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable John D. Reed, Commissioner
Bureau of Labor Statistics
Austin, Texas

Dear Sir:

Opinion No. 0-5759

Re: Does the maximum fee of
30% of first month's salary
of applicant as provided by
Art. 5221a-4, Sec. 1,
V. A. C. S. regulating em-
ployment agents, relate
only to the basic wage or
does the calculation include
wages for overtime?

Your opinion request on the above matter reads
as follows:

"Section 11 of our Employment and Labor
Agency Law as passed by the 48th Legislature
(House Bill 264) reads as follows:

"Where a fee is charged for obtaining
employment such fee in no event shall ex-
ceed the sum of Three (\$3) Dollars, which
may be collected from the applicant only
after employment has been obtained and ac-
cepted by the applicant; provided, however,
employment or labor agents engaged exclu-
sively in providing employment for skilled,
professional, or clerical positions may
charge, with the written consent of the ap-
plicant, a fee, not to exceed thirty (30)
per centum of the first month's salary,
which may be collected from the applicant
only after employment has been obtained
and accepted by the applicant."

"A good many of our employment agencies are mak-
ing placements where the basic wage rate is set out as
a certain amount. However, in some instances these

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employees are working a great many overtime hours, and consequently are paid at the rate of time and a half for those overtime hours, thereby making the total amount of money received for the pay period much greater than the basic wage rate.

"Will you please advise me whether or not the maximum amount of fee to be charged by the employment agency should be based on the basic salary or should be based on the total amount of money received when the overtime is computed."

We think the legislature in establishing the "first month's salary" as a criterion for calculating the maximum fee to be charged by the employment agency used that term synonymously with "wages". It has frequently been so construed. See 38 Words and Phrases 52.

Lacking Texas decisions construing this statute we turn to the New York decision of *Goodman v. Moss*, 43 N. Y. S. (2d) 381, which dealt with a very similar statute providing that the employment agent's fee should not "exceed the amount of the first week's wages or salary." In overturning an administrative ruling by the Commissioner of Licenses for the City of New York which limited the fee to wages paid under the forty hour week exclusive of overtime, the court used the following language which we approve and think equally applicable to the terms of the Texas statute:

"The defendant's ruling is a logical consequence of his interpretation of the statutory work-week as a week of forty hours, but, if his interpretation be erroneous, his ruling must necessarily amount to a lowering of the ceiling set by the statute. It is this court's firm conviction that his interpretation is erroneous.

"There is no state or federal law restricting the number of hours that one may work. There is no state or federal law restricting the number of hours that one may employ another to work. For specified purposes a standard work-week of forty hours is provided in certain industries (Fair Labor Standards Act, U. S. C. A. Title 29, sections 201 et seq.), but, even in cases covered by that act, work may be contracted for and performed

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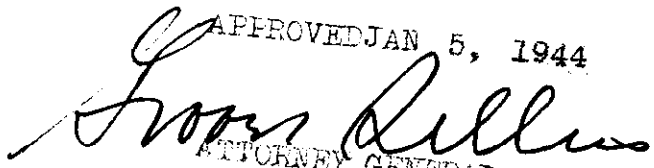
beyond the standard work-week at a wage rate of time and one-half per hour of overtime. The statute under consideration here has no relation to a statute designed to safeguard a minimum standard of living and to prevent unfair competition in interstate commerce. Its only purpose is to prevent the overcharge of a class of patrons whose needs place them at a disadvantage in their dealings with those agencies. That purpose is fully accomplished by the setting of a ceiling in plain and unequivocal language. The ceiling is a fixed fee not to exceed the first week's wages. 'Wages' is the price paid for services, and includes not only money but even board, lodging or clothes. Corpus Juris, Vol. 67, Wages, pages 284, 285. 'Overtime' is defined to mean 'beyond the regular, fixed working hours.' Ferguson v. Port Huron & Sarnia Ferry Co., D. C., 13 F. 2d 489, 492. An overtime wage is consequently but the portion of wages which is paid for the services rendered beyond those regularly fixed hours, and is included in the all-comprehensive term 'wages'.

"Had it been the legislative purpose to exclude overtime wages from the computation of the agents' fees, it could have been plainly expressed in the statute under consideration. The silence on that score is not only patent evidence of a contrary intent, but potent reason for not permitting the defendant to substitute his judgment for that of the legislature."


We trust that we have fully answered your inquiry and assure you that it will be our pleasure to serve you at any time.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

APPROVED JAN 5, 1944

 ATTORNEY GENERAL OF TEXAS

By



Eugene Alvis
 Assistant

EA:jop
 J.C.C.

BWB